

STATUS OF THE APPLICATION

1. This Office action is in response to the Amendment and Remarks filed 28 July 2008.
2. Those objections or rejections not specifically addressed in this Office action are withdrawn in view of Applicants' amendments.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

4. Claims 102-111 are withdrawn from further consideration pursuant to 37 CFR § 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11 January 2008.
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR § 1.48(b) and by the fee required under 37 CFR § 1.17(i).

Drawings

6. New corrected drawings in compliance with 37 CFR § 1.121(d) are required in this application because Applicants failed to renumber the figures accordingly after cancellation of figures in the amendment filed 28 July 2008. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S.

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Patent and Trademark Office no longer prepares new drawings. The requirement for corrected drawings will not be held in abeyance.

Objection to the Specification

7. Applicants' amendments to the specification are objected to because of the reference to cancelled figures in the Brief Description of the Drawings. Appropriate correction is required. The Examiner suggests that if the information is not replicated elsewhere in the specification, that the specification be amended to insert the information elsewhere.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the fourth paragraph of 35 U.S.C. § 112:

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

9. Claim 46 is rejected under 35 U.S.C. § 112, fourth paragraph, as failing to further limit the subject matter of a previous claim upon which it depends. Claim 46 fails to further limit claim 44, as SEQ ID NO: 1 was originally isolated from soybean. It is suggested that at claim 44, line 4, the limitation "represented by SEQ ID NO: 1" be amended to read -- encoding SEQ ID NO: 5 -- to obviate this rejection.

10. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 94-98 and 101 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

At claims 94-98, the claims are indefinite because it is unclear where the “propagating” step is practice in the method of claim 44, or alternatively if Applicants are attempting to claim a different method. Hence, the metes and bounds of the claims are unclear.

At claim 101, the limitation “the transgenic soybean plant” lacks proper antecedent basis in claim 44 as claim 44 fails to recite a method step of generating a transgenic soybean plant, said limitation only recited in the preamble of claim 44.

Allowable Subject Matter

12. Claims 44, 65-93, 99 and 100 are allowed.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is **(571) 272-0799**. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at **(571) 272-0975**. The **central FAX number for official correspondence** is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-1600.

/David H Kruse/
Primary Examiner, Art Unit 1638
20 October 2008